



CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 17, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0193

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement	Not Sustained (Lawful and Proper)
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 3	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)

Named Employee #2

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

The Complainant and the Subject both alleged that Named Employee #1 improperly entered the Subject's apartment and took her into custody due, at least in part, to her race. They both also alleged that the Named Employees used excessive force on the Subject.

SUMMARY OF INVESTIGATION:

The Complainant alleged that she called 911 because she was concerned that her friend – the Subject – was suicidal and presented a danger to herself. The Complainant lived in a different city and believed that this was the best way to get her friend help. She later learned that officers responded to the Subject's residence and, instead of helping her, placed her under arrest and subjected her to excessive force.

OPA's investigation indicated that officers, including the Named Employees, responded to the Subject's apartment. Named Employee #1 (NE#1) knocked and announced the officers' presence. The Subject responded from inside of the apartment. NE#1 said that the officers were there to check on her and the Subject responded: "Do you have any idea how scary this is?" NE#1 asked the Subject to open her door and said the police were there because people had called 911 concerned about her. The Subject cracked open her door and NE#1 introduced himself and said that he was recording. The Subject told him not to push the door in. NE#1 left his hand on the door. The Subject began to criticize the officers about their approach and their attempt to access her apartment. NE#1 used his foot to prevent the door from closing and kept the door open with his arm outstretched.



The Subject continued to argue with NE#1 and told him not to come in. NE#1 tried to explain why the officers were there, but she cut him off and told him to take his foot out of the door. NE#1 ultimately entered the apartment and, when he did so, the Subject threw her phone at NE#1 striking him. NE#1 and Named Employee #2 (NE#2) each took hold of one of the Subject's arms. The Subject was told that she was under arrest and informed that, by throwing her phone at NE#1, she assaulted a police officer. She said that she did so because NE#1 entered her apartment even though she told him not to. The Subject was told that the officers were there because a friend was worried about her and felt it possible that she could commit suicide. She denied that this was the case.

The Subject referenced that she wanted to put additional clothes on. The officers wrapped a blanket around her and began to walk her out of the apartment. She referenced the officers treating her "like a slave." When she got outside, she said that she was injured and dropped to the ground. The Subject continued to argue with the officers, complain about their entry into her apartment, and said that they were causing her pain. She acknowledged taking some pills to sleep but said that she did not try to commit suicide. She told the officers that she was on the phone with her aunt, who is a nurse, when they came to her apartment. The officers called an ambulance to the scene. While waiting for the ambulance, the Subject sat on the ground. The officers ultimately picked her up and walked her to the ambulance and sat her on the gurney. While doing so, the Subject began to get agitated and, specifically, became upset because she was being transported from the scene without her phone. NE#2, who was holding her arm, pushed her head forward and down and told her to relax. The Subject eventually did so and he removed his hand from her head.

A Sergeant came to the scene to screen the Subject's arrest. The Subject told the Sergeant that the officers used excessive force on her and subjected her to biased policing. This OPA investigation ensued.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement

As a general matter, a warrantless entry into a residence is prohibited except where an exception to the warrant requirement applies. One such exception is for community caretaking. An officer may make entry under this exception if "[t]he officer has subjective belief that someone likely needs assistance for health or safety concerns."

Here, NE#1 believed that the Subject was suicidal. This was based on information conveyed to NE#1 by a third party. Given his belief that the Subject could harm herself if left alone, NE#1 was permitted to enter her apartment to verify that she did not present a threat to her own safety. OPA notes that NE#1's suspicion in this regard was likely amplified by the Subject's adamant refusal to allow the officers entry and her lack of cooperation with them. Moreover, even if the Subject was not actually suicidal, NE#1 was entitled to rely on the information provided to him and, given the totality of the circumstances, cannot be said to have acted unreasonably during this incident.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**



Named Employee #1 - Allegation #2

8.200 - Using Force 1. Use of Force: When Authorized

NE#1 and NE#2 used force to take hold of the Subject's arms, to control her person, and to handcuff her. The officers again used force to walk her out of her apartment and outside. Lastly, NE#2 used force to prevent the Subject from raising up unnecessarily while they were trying to seat her on the gurney.

As discussed above, OPA finds that the officers permissibly entered the apartment to perform community caretaking functions. OPA similarly finds that, based on the information available to them, they had reason to believe that the Subject presented a threat of harm to herself and they were permitted to take her into custody in order to seek medical treatment for her. With the legal authority to detain her came the right to use force, if needed, to effectuate this goal. Here, the force used was minimal and was only that needed to further the officers' lawful purpose. The officers never struck her or used anything other than low-level force. Lastly, once the Subject was in custody and under control, the officers modulated their force and then ceased using force altogether.

For these reasons, OPA finds that the officers did not use excessive force during this incident and that the force they did use was consistent with policy. Accordingly, OPA recommends that this allegation against both NE#1 and NE#2 be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #1 - Allegation #3

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

BWV captured the Subject asserting that her detention and NE#1's treatment of her during this incident were based on her race. As such, she claimed that NE#1 engaged in biased policing.

Based on OPA's review of the video, OPA finds no evidence supporting the Subject's bias claim. It appears clear to OPA that NE#1's actions were based on the information he received prior to arriving on the call, as well as based on his perceptions of the Subject's conduct. There is no indication that he, instead, improperly took law enforcement action due to the Subject's status as a Black woman.

Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #2 - Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized

For the same reasons as stated above (see Named Employee #1 – Allegation #2), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**